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# State v. Castro Appellant's Brief Dckt. 44885

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 44885
	)	
v.	)	BONNEVILLE COUNTY
	)	NO. CR 2016-11237
	)	
TRAVIS ALLEN CASTRO,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Travis Allen Castro pled guilty to charges of burglary and grand theft, which arose from events in Bonneville County. The district court sentenced him to a combined, unified term of ten years, with two years fixed, and declined to retain jurisdiction. The court then ordered the sentence to run consecutive to Mr. Castro’s sentence imposed in a separate, Madison County case. Mr. Castro filed a Rule 35 motion asking the court to retain jurisdiction and/or to run the sentences concurrently. The district court denied the motion.

Mindful of the fact that he offered no new or additional information to support his Rule 35 motion, *see State v. Huffman*, 144 Idaho 201, 203 (2007), Mr. Castro asserts on appeal that the district court abused its discretion by denying that motion.

#### Statement of the Facts and Course of Proceedings

On August 16, 2016, police began investigating an intrusion and theft from an Idaho Falls gun store, in Bonneville County. (PSI, p.4.)<sup>1</sup> Mr. Castro was soon identified as a suspect. (PSI, p.4.) He was arrested two days later, after leading police on a high speed car chase through neighboring Madison County. (PSI, p.4.) In this Bonneville County case, the State charged Mr. Castro with the burglary of the gun store, and three counts of grand theft for taking firearms. (R., p.60.) Mr. Castro was also separately charged and sentenced in Madison County Case No. CR-2016-3440.<sup>2</sup> (Tr., p.27, Ls.3-5.)

Pursuant to an agreement, Mr. Castro pled guilty to the burglary charge and to one count of grand theft. (Tr., p.15, Ls.1-23.) In exchange, the State agreed to dismiss the remaining two theft charges, and to join Mr. Castro in a recommendation that his sentence run concurrently with the sentence imposed in the Madison County case. (R., p.79; Tr., p.6, Ls.13-25.)

At the sentencing hearing, Mr. Castro asked the court to impose a combined twelve-year term, with five years fixed – the same sentence imposed in the Madison County case – and asked that the court run the sentence concurrently with his Madison County sentence. (Tr., p.27, Ls.3-5). He additionally asked for retained jurisdiction and a rider, so that he could access the

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<sup>1</sup> Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 131-page electronic file containing those documents.

<sup>2</sup> In the Madison County case, Mr. Castro pled guilty to eluding police, possession of stolen property – and possession of methamphetamine (PSI, p.4); he was sentenced in that case to twelve years, with five years fixed. (Tr., p.27, Ls.3-5.) The Madison County case is also on appeal, Supreme Court Appeal No. 44633.

Department of Correction's drug treatment programs sooner, rather than later. (Tr., p.28, Ls.1-7.)

The district sentenced Mr. Castro to a combined, unified term of ten years, with two years fixed, and declined to retain jurisdiction. (Tr., p.43, L.9 – p.44, L.9.) The court also declined to run Mr. Castro's sentence concurrently with his Madison County sentence, and instead, ordered that the sentence run consecutively. (Tr., p.43, Ls.17-23.)

Mr. Castro timely filed a Rule 35 motion asserting that his sentence was excessive, and specifically asked the court to retain jurisdiction, and/or run his sentence concurrently with his sentence in the Madison County case. (R., p.82.) The State joined in Mr. Castro's Rule 35 request for concurrent sentences. (R., p.84.) Following a hearing and argument, the district court denied the motion. (R., pp.105, 106.) Mr. Castro filed a Notice of Appeal, timely from the order denying his Rule 35 motion.

### ISSUE

Did the district court abuse its discretion when it denied Mr. Castro's Rule 35 requests to retain jurisdiction and to run his sentence in this case concurrently with his sentence in the Madison County case?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Castro's Rule 35 Requests To Retain Jurisdiction, And To Run His Sentence In This Case Concurrently With His Sentence In The Madison County Case

##### A. Introduction

Mindful that he did not present new or additional information in support of his Rule 35 motion for reduction of sentence, *see State v. Huffman*, 144 Idaho 201, 203 (2007), Mr. Castro challenges the denial of that motion as an abuse of district court's sentencing discretion.

B. Standard Of Review

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834.

In addition to imposing a sentence directly, the district court has the discretion to retain jurisdiction. *See* I.C. § 19–2601(4). The primary purpose of retaining jurisdiction after imposing a sentence is to afford the trial court additional time for evaluation of the defendant’s rehabilitation potential and suitability for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). The sentencing court’s refusal to retain jurisdiction is not an abuse of discretion

if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *Id.*, 141 Idaho 673, 677.

C. The District Court Abused Its Discretion When It Denied Mr. Castro's Rule 35 Request To Retain Jurisdiction, And/Or Run His Sentence In This Case Concurrently With His Sentence In The Madison County Case

Mr. Castro's history with drug addiction, and his potential for overcoming that addiction, are strong mitigating factors in this case, *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). These factors also support Mr. Castro's request for retained jurisdiction, which will allow him better access to the treatment programs available within the Department of Correction.

Mr. Castro was thirty years old when he committed these offenses, and he was using methamphetamine and heroin. (PSI, pp.2, 12; Tr., p.106, Ls.16-22.) He had been introduced to methamphetamine when he was a teenager, by his older brother, and he had fought for his sobriety for years. (PSI, p.16.) He successfully ended his drug use, without treatment, when he was twenty one, and had remained clean and sober for eight and one-half years. (PSI, pp.12, 21.) However, after moving from Idaho to California, he relapsed with alcohol, and by June of 2016, he was using methamphetamine again. (PSI, p.21.) He committed the instance offenses in the depths of his addiction and depression, with while his mind was clouded by drug use; he was unemployed, despondent and suicidal, and he had become desperate. (PSI, pp.12, 21.)

Mr. Castro's desire and ability to provide for his young family also serves as mitigation. *State v. Nice*, 103, Idaho 89, 91 (1982). He is a father of two, including a newborn, and he has helped raise his fiancée's six-year-old daughter from the time she was two. He wants to provide for his family financially and emotionally. (PSI, p.18.) Until his recent relapse with drugs, Mr. Castro had worked, paid child support, and provided for his family. (PSI, p.18.)

Finally, Mr. Castro's remorse and responsibility should be considered as mitigation. *See State v. Coffin*, 146 Idaho at 171. In remarks to the court, both during and prior to sentencing, Mr. Castro apologized to his victims, his community, and his family. (PSI, p.18, Tr., p.37, Ls.5-12.)

In light of these mitigating facts, and despite the aggravating ones, Mr. Castro asserts that the district court abused its sentencing discretion by denying his Rule 35 request to run his sentence in this case concurrent with his sentence in the Madison County case, and by declining to retain jurisdiction.

#### CONCLUSION

Mr. Castro respectfully requests that this Court remand his case to the district court with instructions that it retain jurisdiction and order that the sentence in this case run concurrent with the sentence in the Madison County case.

DATED this 13<sup>th</sup> day of July, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13<sup>th</sup> day of July, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TRAVIS ALLEN CASTRO  
INMATE #121329  
C/O FREMONT COUNTY SHERIFF'S OFFICE  
146 N 2ND ST WEST  
ST ANTHONY ID 83445

BRUCE L PICKETT  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JORDAN S CRANE  
PUBLIC DEFENDER OFFICE  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KAC/eas